

RSA No. 130 of 2018 (O&M)

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**RSA No. 130 of 2018 (O&M)
Date of decision: 26.11.2019**

Jaiwanti and another

... Appellants

Versus

Jagat Singh and another

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI, JUDGE

Present: Ms. Sharmila Sharma, Advocate,
for the appellants.

ARUN PALLI, J. (Oral)

The suit filed by the appellants-plaintiffs was dismissed by the trial court, vide judgment and decree dated 21.10.2013, and as even the appeal preferred against the said decree failed and was dismissed on 24.5.2017, they are before this Court in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

Plaintiffs prayed for a declaration that release deed dated 20.4.2005 bearing document No. 668 was a nullity and was liable to be set aside and also for possession qua the agricultural land, measuring 31 kanals 14 marlas, as depicted in the cause title of the plaint. Further, for injunction restraining the defendants from alienating the suit land or delivering its possession, pursuant to the alleged release deed.

In brief, the case set out by the plaintiffs was that they were real sisters of defendants and daughter of late Charan Singh. Post death of their father, parties succeeded to his estate and, thus, they were co-owners in the suit property. However, defendants, to grab the suit land, on the pretext of

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obtaining Bank loan, got a release deed executed in their favour. It was only on 29.3.2008, when the plaintiffs enquired if the said loan was repaid, they got to know about the alleged fraud. Thus, the suit.

In the written statement filed by defendants, it was pleaded, *inter alia*, that the release deed dated 20.4.2005, was executed by the plaintiffs on their own volition, without any pressure and influence. Thus, the suit was liable to be dismissed.

Upon consideration of the matter in issue and evidence on record, both the courts concurrently concluded that the specific case set out by the plaintiffs was that the release deed dated 20.4.2005, was a result of fraud and misrepresentation. However, none other than Jaiwanti (PW2-plaintiff No.1), conceded in her cross examination, that Sub-Registrar concerned had apprised the plaintiffs of the release deed before it was registered. And, it was thereafter plaintiffs affixed their thumb impressions upon the release deed. Thus, the plea that the release deed in question was a result of misrepresentation and fraud remained unproved on record for lack of any cogent evidence. On the contrary, the scribe as also attesting witness to the document had testified in their deposition the due execution of the alleged release deed. The statement of the Registration Clerk (DW5) also corroborated the claim of the defendants. Further, even the plea that defendants had failed to prove the release deed, in terms of provisions of the Evidence Act, was equally erroneous. Concededly, plaintiffs had not disputed their thumb impressions and photographs that were affixed on the release deed. As regards the release deed being insufficiently stamped, it was concluded that concededly the plaintiffs were parties to the said document and the execution thereof was duly proved. That being so, they

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had no locus to question the release deed on the ground of insufficient stamp fee. Even otherwise, the evidence on record showed that as the release deed was executed by the plaintiffs in favour of defendants, who happened to be their real brothers, the same was exempted from payment of stamp duty. That being so, the only and the inevitable conclusion that could be reached: suit was liable to be dismissed.

Upon being pointedly asked, learned counsel for the appellants could not refer to anything on record to show if the conclusions arrived at were either contrary to the record or suffered from any material illegality. No ground is made out to interfere with the concurrent findings recorded by both the courts. The appeal being devoid of merit, is accordingly dismissed.

(ARUN PALLI)
JUDGE

November 26, 2019

AK Sharma

Whether speaking / reasoned:

YES

Whether Reportable:

YES/NO